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MEMORANDUM

TO: Marine Resources Task Force
FROM: Bill Spikowski
DATE: January 3, 2005
SUBJECT: LAND DEVELOPMENT CODE AMENDMENTS, CHAPTER 14

Thank you for reviewing the proposed amendments to Chapters 6, 14, 27, and 34 of the Land Development Code during your November and December meetings.

One unresolved issue remains for your January meeting. Two alternatives had been reviewed for Section 14-5(a) regarding beach furniture and equipment. Alternative #1 was reviewed in November and Alternative #2 was reviewed in December; neither were fully satisfactory.

Since that time, I have attempted to draft another alternative that would provide differing regulations for geographic segments of the beach. This approach has not proven successful, but in its place I have prepared an Alternative #3 that I believe would accomplish the same goals:

- During the sea turtle nesting season, provide maximum protection for the turtles.
- During the non-nesting season, allow beach *furniture* to remain on the beach overnight, but don't allow tractors, jet skis, and other equipment to remain on the beach overnight.
- Provide regulations that are easier to understand and enforce than the current regulations.

Alternative #3 requires the definition of "beach furniture and equipment" to be broken into two separate definitions. It also uses a new definition of "landward line of dune vegetation" to replace references to the EC zoning district.

Please review Alternative #3 carefully prior to your January 12th meeting (6:00 P.M.). If you do not find it satisfactory, please think about how it might be altered so that the Task Force can reach a consensus on this important matter. The first public hearing on this ordinance will be held before the Local Planning Agency on January 18th at noon.

Attachment:

- ▶ *Proposed §§ 14-1, 14-3, and 14-5 (with three alternatives for § 14-5(a))*

EXHIBIT E

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 14 — ENVIRONMENT AND NATURAL RESOURCES

ARTICLE I. BEACH AND DUNE MANAGEMENT ²

Sec. 14-1. Definitions.

For the purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word “shall” is always mandatory.

~~*Beach* has the same meaning given it in § 14-72.~~

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, usually the effective limit of storm waves. Beaches include dunes and dune vegetation.

~~*Beach furniture or equipment* means any man-made apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs, tables, cabanas, lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.~~

Beach furniture means furniture that is placed on the beach for passive recreational use. Examples include chairs, tables, cabanas, lounges, and umbrellas.

² *Cross reference(s)*—Sea turtle conservation, article II of ch.14; personal watercraft and parasailing, ch. 27; water-oriented rentals activities, div. 41 of ch. 34.

Beach equipment means any man-made apparatus or paraphernalia, except for beach furniture, that is designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: sailboats up to 16 feet in length, personal watercraft, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, vehicles allowed on the beach (see § 14-7), and equipment used by concessionaires such as tables, podiums, booths, or storage boxes.

...

Dune means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference 161.54 F.S., 62B-33.002 F.A.C.). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

Dune vegetation means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore dropseed, seashore paspalum, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morningglory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, ~~green buttonwood, cabbage palm, cocoplum, and seagrape, and southern wax myrtle.~~

Landward line of dune vegetation means the location furthest from the mean high water line containing, or suitable for, dune vegetation. If no dune vegetation is present, this line shall be assumed to be a straight line between the landward line of dune vegetation on the nearest properties that have dune vegetation.

Mechanical beach raking means the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing ambient grade and results in no removal of in situ sand.

~~Seaward line of vegetation~~ means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

...

Sec. 14-3. Destruction or diminishment of dune or beach system.

(a) It is unlawful and prohibited for any person to do, conduct, or permit any of the following on a beach, upon a dune, or in the water adjacent to a beach:

- (1) harass, molest, or disturb wildlife;
- (2) plant vegetation other than dune vegetation;
- (3) destroy or harm a dune, or mow, herbicide, harm, or remove dune vegetation;
- (4) maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris (see § 14-4);
- (5) deposit and leave human or animal waste (see § 14-4);
- (6) destroy or grossly interfere with the natural wrack line as by grooming or non-selective raking except as authorized in § 14-6;
- (7) operate any air-powered or any engine-powered non-watercraft vehicle, machine, or implement, including any battery or electrical powered vehicle, machine, or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability or as authorized in § 14-7;
- (8) excavate, mine, and remove, or haul sand or soil from the beach or dune except in emergency situations as declared by the Town Council;
- (9) detonate any explosive devices, including fireworks;
- (10) discharge any firearms;
- (11) light or maintain any open fire on Mulholland Point (Little Estero Island);
- (12) temporarily reside, camp, or sleep overnight;
- (13) deposit/install rocks, concrete, or other shoreline stabilization materials without a permit from DEP and the town;
- (14) deposit/add sand to the beach and dune system without a permit from DEP. All fill material shall be sand that is similar to the existing beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter; or
- (15) conduct any commercial activities not explicitly authorized by this code or by other town ordinances.

Sec. 14-5. Beach furniture and equipment.

ALTERNATIVE #1 for 14-5(a):

(a) ~~From May 1 through October 31, All beach furniture and equipment must be removed from the beach as follows: (1) All beach furniture and equipment must be removed from the beach~~ EC zoning district (seaward of the 1978 coastal construction control line) between the hours of 9:00 P.M. until 7:00 8:00 A.M.

~~(2) The beach furniture and equipment must be moved daily either behind the permanent dune line; or where no dune line is present; and the beach is wide, then 200 feet from the mean high water line; or where the beach is narrow to the adjacent permanent structure and landward of any seawall.~~

(1) Where compliance with the foregoing provisions would cause an undue hardship due to a physical barrier such as a tall seawall, the town manager may, after determining the minimum variance from the requirements of this ordinance to reflect the physical barrier, designate the storage location. (3) Beach furniture and equipment that is removed from allowed to remain on the beach pursuant to a variance must be the maximum distance from the water, at least 10 feet from a sea turtle nest and from a dune or dune vegetation, and as specified in § 14-5(a)(2) shall then be safely stacked in areas no larger than 10 feet by 10 feet and each stack must be at least 50 feet removed or apart from the next stack. Stacking is not required for personal watercraft; all wooden cabanas must be stacked after May 1, 2006.

(2) For special events where beach furniture and equipment must be on the beach earlier than 8:00 A.M., the town's special events permit may authorize a different schedule provided arrangements have been made with the FWC-authorized marine turtle permit holder to monitor the area prior to setup.

ALTERNATIVE #2 for 14-5(a):

(a) ~~From May 1 through October 31, All beach furniture and equipment must be removed from the beach as follows: (1) All beach furniture and equipment must be removed from the beach between the hours of 9:00 P.M. until 7:00 8:00 A.M. as follows:~~

(1) From May 1 through October 31, all beach furniture and equipment must be removed from the EC zoning district (seaward of the 1978 coastal construction control line) between the hours of 9:00 P.M. until 8:00 A.M. No exceptions or variances can be made to this rule.

(2) From November 1 through April 30, the beach furniture and equipment must be moved daily either behind the permanent dune line (the farthest landward extent of dunes and dune vegetation); or where no dune line is present and the beach is wide, then 500 200 feet from the mean high water line; or where the beach is narrow, to the adjacent permanent structure and landward of any seawall. Where compliance with the foregoing provisions would cause an undue hardship due to a physical barrier such as a tall seawall, the town manager may, after determining the minimum variance from the requirements of this ordinance to reflect the physical barrier, designate the storage location. (3) Beach furniture and equipment that is removed from allowed to remain on the beach pursuant to an administrative variance must be the maximum distance from the water, at least 10 feet from a sea turtle nest and from a dune or dune vegetation, and as specified in § 14-5(a)(2) shall then be safely stacked in areas no larger than 10 feet by 10 feet and each stack must be at least 50 feet removed or apart from the next stack. Stacking is not required for personal watercraft; all wooden cabanas must be stacked after May 1, 2006.

ALTERNATIVE #3 for 14-5(a):

~~(a)~~ *[existing subsection (a) deleted]*

(a) This code regulates the placement and storage of beach furniture and beach equipment.

(1) Beach furniture.

a. During the sea turtle nesting season (from May 1 through October 31), all beach furniture must be removed from the beach between the hours of 9:00 P.M. and 8:00 A.M. The only exception is that until May 1, 2006, cabanas may remain on the beach at night provided they are at least 500 feet from the mean high water line.

b. Before and after the sea turtle nesting season, beach furniture may remain on the beach at night.

(2) Vehicles. Vehicular traffic on the beach is regulated by §§ 14-5(e), 14-6, and 14-7. Vehicles that are not in use may not be stored on the beach at any time.

(3) Concessionaires. A business that rents beach furniture may place one free-standing structure on the beach during its regular business hours only. This structure may be a table, podium, booth, or storage box and it must meet the same requirements as set forth in § 27-51(c), including removal from the beach after business hours to a location behind the landward line of dune vegetation.

(4) Other beach equipment. Unless allowed by a specific provision of this code, beach equipment must be removed from the beach between the hours of 9:00 P.M. and 8:00 A.M. year around and placed behind the landward line of dune vegetation.

(5) Special events. Special events on the beach are regulated by § 14-11. For special events where beach furniture and equipment must be on the beach earlier than 8:00 A.M., the town's special events permit may authorize a different schedule provided arrangements have been made with the FWC-authorized marine turtle permit holder to monitor the area prior to setup.

(b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach between the hours of 9:00 P.M. and ~~7:00~~ 8:00 A.M.

(c) No later than the first day of June, beach properties that have more than 5 cabanas or offer beach equipment for use shall file a hurricane action plan with the town each year prior to the beginning of hurricane season and provide a contact person with current phone number.

(d) All beach furniture and equipment (such as chairs, umbrellas, and cabanas, and rental podium, but excluding water-dependent equipment) shall be set landward of the mean high water line and at least 10 feet from a sea turtle nest or dune vegetation. A business that rents chairs, umbrellas, cabanas, or similar equipment may place one free-standing structure on the beach during its regular business hours only. This structure may be a table, podium, booth, or storage box and it must meet the same requirements as set forth in § 27-51(c), including removal from the beach after business hours.

[final two sentences would be unnecessary if Alternative #3 is selected]

(e) Vendors wishing to use a vehicle to transport furniture and equipment to and from the beach must obtain a permit from the town through the permit process described in § 14-6(c) and must abide by the same restrictions. If a beach raking permit is also applied for, the permits will be incorporated into one permit. The following additional restrictions apply to all transport permits:

(1) Equipment shall not be set out in the morning before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.

(2) Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.

(3) The vehicle, trailer, and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the formula in § 14-6(c)(4)d.1. Beach furniture and equipment may be placed on a vehicle or on a wheeled trailer but may not be dragged or pushed by a vehicle.